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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,646	12/16/2003	Uri Armin	1351VAS-US	3539

32964 7590 07/05/2006

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/735,646	Applicant(s) ARNIN ET AL.	
	Examiner Brian E. Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3-6,8,9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stubstad et al. (3867728). Fig. 2 shows a spinal prosthesis having an outer case formed of upper and lower plates **11,12** with bone growth coatings **21, 21'** (col. 8, line 42) and since these coatings permit ingrowth it can be construed that the coating layers are anchoring elements also, col. 8, lines 55-59. Stubstad et al. disclose the core is an elastomer, col. 9, lines 39-41. Fig. 6 illustrates the prosthesis has an inner member or "cartridge" having a shock absorbing core formed of a fluid, col. 9, lines 64-67. Please note the Examiner is not giving any special definition to the term "cartridge".

Claims 1-5,7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryan et al. (2002/35400). Fig. 7 shows a spinal prosthesis with an outer casing having upper and lower plates **20,40** and a "cartridge" **70** with a shock absorbing core **60** within

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the “cartridge.” Please note the Examiner is not giving any special definition to the term “cartridge”. Fig. 6 shows the cartridge is mounted in grooves **82,84** of the outer casing and is releasably locked to the outer case via rings **71,72**. Bryan et al. disclose the shock absorbing core is an elastomer and can have different materials and properties, paragraph 88. It can be construed that flanges **25,45** (shown in Fig. 6) on the outer surface of outer case can be anchoring elements. Bryan also discloses (Fig. 6) the outer case is coated with a bone-growth encouraging material **22,42**, paragraph 83. It can also be construed that the cartridge **70** forms an elastomeric ring, paragraph 89.

Claims 1,2,5-7,9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryan et al. (WO 00/13619). Fig. 4 shows a spinal prosthesis with an outer casing having upper and lower plates **22,24** and a “cartridge” **41,42** with a shock absorbing core within the “cartridge.” Please note the Examiner is not giving any special definition to the term “cartridge”. Bryan et al. disclose the shock absorbing core is an elastomer and can have different materials and properties, page 4, lines 5,6. Bryan also discloses the prosthesis can have a fluid within it, page 3, lines 29-31. Bryan additionally discloses the cartridge is releasably locked to the outer case via circlage wires, page 4, lines 10,11.

Claims 1,4,9 are rejected under 35 U.S.C. 102(e) as being anticipated by Pisharodi (6610093). Fig. 3 shows a spinal prosthesis having an outer case formed of upper and lower plates **22,24** with the outer surface having anchoring elements **50**. It can also be seen that there is a removably mounted cartridge **26B** in the outer case. Pisharodi also discloses (Fig. 4A) an alternative cartridge **26C** with an inner shock


absorbing core **64A**, col. 4 lines 39-44. Please note the Examiner is not giving any special definition to the term "cartridge".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 6:30am to 4pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738


BRIAN E. PELLEGRINO
PRIMARY EXAMINER